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IN THE

Supreme Court of the United States

October Term, 1976.

No. 76-

CLAYMONT SCHOOL DISTRICT and STANTON SCHOOL DISTRICT,

Appellants,

v.

BRENDA EVANS, et al.,

Appellees.

JURISDICTIONAL STATEMENT.

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JURISDICTIONAL STATEMENT.

MAY IT PLEASE THE COURT:

The defendants, Claymont School District and Stanton School District, appeal from the judgment entered on June 15, 1976, of the three-Judge District Court for the District of Delaware ordering an interdistrict desegregation plan which has the effect of desegregating ten suburban school districts which currently operate unitary school systems and which have not been found to be unconstitutionally segregated in addition to the Wilmington School District which has been found to have operated a dual school system and to have racially segregated schools. The Court's judgment also dissolves all ten of the suburban school districts and orders that they be merged with the Wilmington School District into one large super district.

A copy of the judgment is set out in Appendix B to the Jurisdictional Statement filed on behalf of the Delaware State Board of Education at page A-72 of said Jurisdictional Statement. Said Appendix B is incorporated herein by reference.

OPINIONS BELOW.

The most recent majority and dissenting and concurring opinions in the three-Judge Court for the District of Delaware are at 416 F. Supp. 328. They are set out in Appendix A [1] which is attached to the Jurisdictional Statement filed on behalf of the Delaware State Board of Education at pages A1-A71 of said Jurisdictional Statement.

The opinions preceding the interlocutory order of April 16, 1975, of the District Court are reported at 379 F. Supp. 1218 (D. Del. 1974) and 393 F. Supp. 428 (D. Del. 1975). An appeal was taken from the interlocutory order of April 16, 1975, which enjoined the parties to submit (1) proposed single district desegregation plans for the Wilmington schools and (2) proposed interdistrict plans for such desegregation. The interlocutory injunctive order was summarily affirmed without an opinion. 423 U. S. 963 (1975).

JURISDICTION.

The judgment of the three-Judge Court was entered on June 15, 1976. Appellants filed a Notice of Appeal on August 9, 1976. A copy of the Notice of Appeal is set out in Appendix C hereto, at page A76.[2] This Court has jurisdiction pursuant to 28 *U. S. C.*, § 1253.

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1. Appendix A to the Jurisdictional Statement of the Delaware State Board of Education is incorporated herein by reference.

2. For its Appendices A and B, the appellants herein have referred to and adopted Appendices A and B as they appear in the Jurisdictional Statement filed on behalf of the Delaware State Board of Education.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

Fourteenth Amendment to the Constitution of the United States:

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Educational Advancement Act of 1968, 14 *Del. C.* §§ 1004 (c)(2), (4):

"(c) On or before March 1, 1969, the State Board of Education shall meet and adopt a final plan of reorganization of school districts which it deems wise and in the best interests of the educational system of this State; provided, that no plan of reorganization of school districts shall be adopted which fails to meet the following requirements: . . .

(2) Each proposed school district including more than one component former school district shall have a pupil enrollment of not less than 1,900 nor more than 12,000 in grades 1 through 12. 'Pupil enrollment' as used in this subsection means enrollment as of September 30, 1968. Excluding vocational-technical districts there shall be no fewer than 20 nor more than 25 reorganized school districts . . . .

(4) The proposed school district for the City of Wilmington shall be the City of Wilmington with the territory within its limits. . . ."

QUESTIONS PRESENTED.

I. Can a district court in a school desegregation case validly order "interdistrict relief" where it has specifically found that the alleged "interdistrict violation" on which that relief is predicated was not "racially motivated" and there is no evidence of any "racial effect?"

II. Can a district court in a school desegregation case order the dissolution of eleven existing school districts, the establishment of a single school district in their place, and a racial quota of black students in every grade in every school in the enlarged district of not less than 10% nor more than 35%?

III. Does the finding of a "constitutional violation" in a desegregation case license a trial court to order any remedy it thinks appropriate, or must the remedy be directed to curing the alleged wrong?

STATEMENT.

The Appellants, Claymont School District and Stanton School District, are two of the suburban school districts that are to be dissolved no later than June 30, 1977, by reason of the lower Court's judgment of June 15, 1976. The two school districts are similarly situated in that they are suburban school districts, operate unitary school systems and are not contiguous to the boundaries of the Wilmington School District. Each district is administered by its own school board of five citizens elected by the voters of the district.[3] Additionally, in conformity with the traditional policies of the State of Delaware, both districts are comparatively small.

Prior to the Educational Advancement Act of 1968, both districts were non-contiguous to the Wilmington school district and could not have been consolidated with the Wilmington school district unless other districts situated in between Claymont and Stanton were also consolidated. In point of fact, the State Board of Education in implementing the provisions of the Educational Advancement Act of 1968 in New Castle County did not consolidate more than two contiguous districts into any new reorganized district with one limited exception.

The Claymont school district has further unique characteristics. Claymont is the only remaining community in New Castle County, other than Wilmington, which has its own school district within its boundaries. Although an unincorporated area, it is a compact community with its own fire department and post office. It has traditionally had its own school district and the support of public education in the district has been good through the years.

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3. This is true of all but one of the ten suburban districts, the Alexis I. duPont School District, whose board is appointed. Wilmington's board is also appointed.

Claymont was involved in the first school desegregation in the State of Delaware and acquitted itself well. Further, Claymont was one of the few suburban districts which were not involved in a consolidation or merger under the Educational Advancement Act of 1968.

Claymont is the only suburban district in New Castle County which is a "walk in" district. Its pupils and parents are not accustomed to busing even within the district except in a small minority of cases. Approximately 10% to 11% of the students are bused within the district. There was testimony at the hearings below that the socio-economic characteristics of the Claymont community are such that mandatory busing would likely be more difficult to implement smoothly within the district than within other suburban districts.

Both of these autonomous school districts have been operating unitary systems. Neither have been found to have committed an unconstitutional act. No finding has been made and no evidence has been cited to the effect that a racially discriminatory act has been committed in another district which has caused racial segregation in either the Claymont or Stanton School Districts. Yet, the Court below has decreed that they be abolished and that a specified racial quota be established in every grade level of every school in their respective districts. Such quotas bear no resemblance to the racial characteristics of the two districts.[4]

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4. Footnote 11 of the lower Court's opinion of May 19, 1976 (A 5 and page 336 of 416 F. Supp.), states that Claymont's student enrollment is 94.9% white and Stanton's student enrollment is 98.1% white.

THE QUESTIONS RAISED BY THIS APPEAL ARE SUBSTANTIAL.

The Delaware State Board of Education, another appellant in this case, has previously filed a Jurisdictional Statement in this proceeding. We submit that it has clearly demonstrated that the questions raised by this appeal are substantial and should be considered in depth by this Court in the interest of correcting the clear error below and in the larger interest of giving federal courts throughout the nation further guidance in school desegregation cases involving metropolitan areas. Our effort herein is not to repeat and reiterate what has been stated by the Delaware State Board of Education in its Jurisdictional Statement but, rather, to supplement what has been stated and to further demonstrate the injustice that has been done to individual school districts and their constituencies by the judgment of the Court below as well as the dangerous precedents set by that judgment.

I. There Is No Constitutional Violation on Which to Predicate Interdistrict Relief.

A. In Holding That There Was a Constitutional Violation in the Absence of "Discriminatory Racial Purpose," the Trial Court's Decision Is in Conflict With the Decision of the Court of Appeals for the Fourth Circuit in *Bradley v. Richmond* and of This Court in *Washington v. Davis*.

Milliken v. Bradley, 338 F. Supp. 583 (E. D. Mich. 1971); aff'd in part 484 F. 2d 215 (6th Cir., 1973); rev'd. 418 U. S. 717, 41 L. Ed. 2d 1069, 94 S. Ct. 3112 (1974) holds that in an interdistrict context there must be a constitutional violation within one district that produces a significant segregative effect in another district. Such

violation must have had a racially discriminatory purpose. There must be a substantial causal relationship between the violation and the interdistrict segregation. The judgment of the Court below and its supporting opinions raise substantial questions as to the correctness of the Court's interpretation of *Milliken* and as to other courts' future interpretations as well.

The lower Court's opinion of March 27, 1975, reported at 393 F. Supp. 428 (D. Del. 1974), which preceded its interlocutory order of April 16, 1975, enjoining the parties to submit plans for intradistrict and interdistrict remedies, erroneously interpreted *Milliken*. The Court concluded that the presence of a racially purposeful act was not required to support a finding of an interdistrict constitutional violation requiring an interdistrict remedy. Rather, the Court found it sufficient that government policies in such fields as education, housing and zoning were "responsible to a significant degree for the increasing disparity in residential and school populations between Wilmington and its suburbs in the past two decades."[5]

In the same opinion, the lower court interpreted *Milliken* as forming the basis for finding an interdistrict constitutional violation in a statute, the Educational Advancement Act of 1968, 14 *Del. C.* §§ 1001 et seq., which was found *not* to be purposefully discriminatory or segregative but, rather, racially neutral. The Court theorized that the statute had the effect of making the consolidation of school districts in New Castle County "promoting racial balance substantially less accessible than other educational strategies." The Act was found to have "a significant

5. The Fourth Circuit of Appeals' analysis of the causes of the racial disparity between the populations of the inner cities of America and their surrounding suburbs in *Bradley v. School Board of City of Richmond*, 462 F. 2d 1058 at 1066 (4th Cir. 1972) is clearly applicable to Wilmington and is a total and complete answer to the above finding of the court below.

racial impact on the policies of the State Board of Education" (393 F. Supp. at 442) and the Court concluded that it could not find that the Act "was racially insignificant." (393 F. Supp. at 445). On these tenuous grounds, the Court held that the statute constituted an interdistrict violation. Not only did the Court fail to find that the interdistrict violation was racially purposeful but it failed to heed the requirement of *Milliken* that there be a "substantial" causal relationship between the violation and the interdistrict segregation. The highest degree of causation found by the Court below was that the statute prevented the State Board from using the Act, admittedly passed to rectify the state wide problem of small, weak and ineffective school districts, to further desegregate the Wilmington School District. Thus, the statute was said to play "a significant part in maintaining the racial identifiability of Wilmington and the suburban New Castle County school districts." (393 F. Supp. at 445). The Court admitted that it did not know whether, if Wilmington had not been excluded from possible consolidation, it in fact would have been altered significantly. Thus, the Court's rationale was based on speculation and conjecture and we submit is clearly contrary to *Milliken*.

Following the lower Court's opinion of March 27, 1975, and its interlocutory injunctive order of April 16, 1975, this Court decided *Hills v. Gautreaux*, — U. S. —, 47 L. Ed. 2d 792, 96 S. Ct. — (April 20, 1976). If there was any basis for the lower Court's confusion with respect to this Court's decision in *Milliken*, it should have been diffused by this Court's helpful discussion in *Gautreaux* in which this Court clearly stated that *Milliken* holds that there is a fundamental limitation on the remedial powers of the federal courts to restructure the operation of local and state governmental entities such as the school dis-

tricts of New Castle County. Such powers cannot be exercised "without the necessary predicate of a constitutional violation by those entities or of the identification within them of any significant segregative effects resulting from" the unconstitutional conduct that may have taken place within the city school district.

In its May 19, 1976 (A1, 416 F. Supp. 328), opinion the lower Court acknowledged *Gautreaux* which had been decided a month earlier and attempted to bring its earlier opinion of March 27, 1975, into step with it. However, the Court did not address itself directly to the essential predicate which was so clearly defined in *Gautreaux*. The Court turned to its previous findings concerning the unconstitutionality of 14 *Delaware Code* §§ 1004(c)(2) and 1004(c)(4) of the Delaware Educational Advancement Act of 1968. It becomes significant, therefore, to review certain parts of the Court's earlier discussions pertaining to the Delaware Educational Advancement Act and to compare those points with its attempt to reconcile its conclusions with *Gautreaux* in its most recent opinion of May 19, 1976.

In its opinion of March 27, 1975, at page 431 of 393 F. Supp. the lower Court discussed *Milliken* and quoted that portion of *Milliken* that states that:

> ". . . it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local districts, or of a single district have been a substantial cause of interdistrict segregation."

The Court acknowledged that in Michigan "district boundaries were not established for the *purpose* of creat-

ing, maintaining, or perpetuating segregation of races" (emphasis supplied). In that acknowledgement, the Court appeared to recognize that such action must be purposeful in order to constitute an interdistrict violation. Later in its opinion at page 439 of 393 F. Supp. it expressly concluded that the Educational Advancement Act was not "purposefully racially discriminatory" and that "the record does not demonstrate that a significant purpose of the Educational Advancement Act was to foster or perpetuate discrimination through school reorganization." This being its conclusion, we submit that *Milliken* required that the Court proceed to conclude that the Educational Advancement Act of 1968 did not form a basis for a finding of an interdistrict violation. Instead, the Court proceeded to ignore *Milliken*, and concluded that a finding of purpose was not required if an "effect" were found that was discriminatory. The Court then determined that since, in its view, the Educational Advancement Act "precluded the State Board from considering the 'integrative opportunities' of redistricting in New Castle County in any meaningful way" and that the Act "made consolidation promoting racial balance substantially less accessible than other educational strategies," the Act had a significant racial impact on the policies of the State Board of Education and constituted an interdistrict constitutional violation under *Milliken*.[6] In so doing, the Court ignored its

6. The Jurisdictional Statement filed on behalf of the Newark School District in these proceedings states at page 25: "Specifically, the Court found that these provisions were 'a substantial cause of interdistrict segregation' and thus a basis for interdistrict remedy under the reasoning of *Milliken* (393 F. Supp. 439)." This statement is incorrect. Although the District Court acknowledged that *Milliken* required "a substantial cause", the District Court failed to make such a specific finding but concluded that the Act "played a significant part in maintaining the racial identifiability of Wilmington and the suburban New Castle County school districts" (393 F. Supp. 445). As argued above, this falls short of finding that it was "a substantial cause of interdistrict segregation."

own earlier acknowledgment concerning the need for an interdistrict violation to be purposeful and also ignored the requirement, found in *Milliken*, that an unconstitutional act must have been a substantial cause [7] of interdistrict segregation in order to constitute "a significant segregative effect." Further, the Court ignored the fact that any constitutional violation which may have taken place within the Wilmington School District had not produced a significant segregative effect in other districts and, specifically, not in the Claymont or Stanton districts.

In its most recent opinion of May 19, 1976, the lower Court attempted to deal with *Gautreaux*. In doing so, it alluded to its previous conclusions with respect to the Educational Advancement Act that it had "refused to hold that the Educational Advancement Act was passed for racially discriminatory purposes" but proceeded to state that there was no need to make such a finding. The Court stated that it had found that the lines drawn in the Edu-

7. The lower Court's own recitation of the record below demonstrates that the Educational Advancement Act of 1968 could not have had the slightest causal effect upon the segregation of Wilmington schools and certainly not a substantial effect. At page 433 of 393 F. Supp. (the lower Court's March 27, 1975, opinion) it is stated that in 1954 approximately 28% of the Wilmington school enrollment was black, in 1964 approximately 57% of the Wilmington school enrollment was black and in 1973 approximately 83% of the Wilmington school enrollment was black. If these data were placed on a graph it would be demonstrated that there was a direct linear growth in the black school population in the Wilmington School District from 1954 to 1974. The Educational Advancement Act did not affect this linear growth. The reason for this steady linear growth goes beyond the scope and limitations of this case and would appear to parallel a national phenomenon that has occurred in most metropolitan areas throughout the country. Significantly, since the Educational Advancement Act had no effect upon this direct linear growth, it must be concluded that the Educational Advancement Act in no way caused the segregation of the Wilmington schools. Indeed, the racial characteristics of the Wilmington schools would be the same today as they presently are even if there had not been an Educational Advancement Act.

cational Advancement Act of 1968 "were drawn with the effect of precluding Wilmington; and that such a decision was made *knowing the effect.*"

Thus, although in its earlier opinion the Court expressly found that the record did not demonstrate that the provisions excluding the Wilmington District from school reorganization were purposefully racially discriminatory and even observed that some legislators may not have known that the Wilmington School District was predominately black, it attempted to justify its earlier ruling by holding that the effect of precluding Wilmington was racially discriminatory and that the legislators' decision to exclude Wilmington (and by virtue of the Act's provisions limiting the size of pupil enrollment in a given district, a large suburban district, Newark, as well) from possible consolidation was made knowing the effect. Thus the Court has held that the provisions of the Act were not purposefully discriminatory and that the legislature did not intend racial discrimination by it. Yet, the Court has also concluded that the effect of the legislative action was racially discriminatory and that the legislators knew it. This is circular reasoning which attempts to circumvent *Milliken* and *Gautreaux*. The lower Court's conclusion that it was not necessary to hold that the Educational Advancement Act was passed for racially discriminatory purposes is inconsistent with this Court's previous pronouncements of the applicable law and it should be corrected not only for the proper guidance of the Court below in the case at bar but, also, for the proper guidance of Federal Courts throughout the nation.

Had the Court below had the benefit of this Court's opinion in *Washington v. Davis*, — U. S. —, 48 L. Ed. 2d 597, 96 S. Ct. — (June 7, 1976) it is reasonable to conclude that it would have felt compelled to reach a dif-

ferent result with respect to the Educational Advancement Act. Whereas, the Court below concluded that there was no need to find that legislation was passed for racially discriminatory purposes in order for there to be a constitutional violation in school desegregation cases, this Court stated in *Washington v. Davis,* supra, that this Court's previous decisions "have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact" and that a "purpose to discriminate must be present."

More specifically, this Court stated that:

> "The school desegregation cases have also adhered to the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose * * * ."

The Educational Advancement Act fits precisely into this Court's statement in *Washington v. Davis* at page 609 of 48 L. Ed. 2d:

> "* * * we have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. . . ."

This Court's opinion in *Washington v. Davis* demonstrates the error that the lower Court fell into with respect to the Educational Advancement Act and we submit that a substantial question exists with respect to the lower

Court's findings and conclusions with respect to the Educational Advancement Act. We further submit that the lower Court's opinion will serve to confuse other Federal Courts dealing with interdistrict segregation cases if it is permitted to stand. It should be reviewed by this Court and reversed.

B. In Holding That Evidence of Segregatory Housing Practices Constituted a "Constitutional Violation" Justifying an Interdistrict Remedy, the Decision Below Is in Conflict With This Court's Decision in *Milliken* and the Fourth Circuit's Judgment in *Richmond*.

A second basis for finding that an interdistrict violation had occurred was that state and local officials had engaged in certain acts, primarily in the housing and zoning fields, which had an effect on the enrollment patterns of the school districts throughout New Castle County.

More specifically, the Court in its opinion of March 27, 1975, referred to the residential demographic changes of the past two decades which had "a striking effect on the school attendance patterns in the County." The Court observed that the growth of identifiably black schools mirrored population shifts in New Castle County and that the demographic changes resulted "to a significant extent" from the "assistance, encouragement, and authorization by governmental policies." (393 F. Supp. at p. 434). The Court referred to the Federal Housing Administration policies of the 1930s and 1940s but did not undertake to make a finding as to their causal relationships to the interdistrict segregation which it found to exist in the case *sub judice*. Further, it referred in a passing manner to racial discrimination in the sale or rental of private housing in New Castle County which was found to have been

"sanctioned" by state officials but there was no finding as to the extent of its causal relationship to the interdistrict school segregation which is at issue in this case. The Court observed that racially restrictive covenants continued to be recorded in New Castle County real estate deeds until 1973 but there was no showing that such recording constituted enforcement of such restrictive covenants or that the Recorder of Deeds had the duty to refuse to receive such deeds or to delete the unenforceable provisions. Clearly, such restrictive covenants have been illegal since *Shelley v. Kraemer*, 334 U. S. 1, 92 L. Ed. 1161, 68 S. Ct. 836 (1948) and could not have been enforced whether or not appearing in deeds.

The public housing policies were said to have "contributed to the concentration of minority residents in Wilmington." However, the Court observed that there are "many legitimate objections to public housing developments." It concluded, that the "evident effect" of zoning problems with respect to public housing in the county was to "concentrate poor and minority families in Wilmington." This falls short of being a "substantial cause" of the interdistrict school segregation which is at issue in the case at bar.

The Court referred to certain policies in the Wilmington School Board which "may have" contributed to the flight of white families with school age children to the suburbs although "possibly designed to minimize" such an occurrence. The Court observed that "to some extent," the school policies of the Wilmington school officials "may have affected the relative racial balance in housing and schools in Wilmington and the suburbs." Once again, the Court fell short of finding that there was a substantial causal relationship.

The Court also referred to state subsidized intradistrict transportation of students, black and white, to private

and parochial schools programs and concluded that "To the extent that the subsidy has had an effect on public school enrollment, it has undoubtedly served to augment the racial disparity between Wilmington and suburban public school populations" but failed to make a finding as to a substantial causal relationship.

Thus, the Court below substituted for this Court's requirement that there be a substantial causal relationship between a constitutional violation and a resulting interdistrict segregative effect such cause and effect findings as "may have," "to a significant extent," "contributed to," "possibly," "to some extent" and the like. We submit that a substantial question exists as to whether the Court below complied with the teachings of *Milliken* as further enunciated in *Gautreaux* and *Washington* and as to whether the Court properly found the basis for an interdistrict school desegregation remedy.

II. The "Relief" Afforded by the Trial Court Exceeded Its Authority Under the Decisions of This Court.

Assuming, arguendo, that this Court concludes that there was an interdistrict violation in the case at bar and that an interdistrict remedy is appropriate, we submit that a substantial question exists as to the excessiveness of the remedy that has been ordered.

This Court has previously held that the remedy to be fashioned by a Federal Court where there has been a constitutional violation is determined by the nature of the violation which must limit the scope of the remedy. The purpose of the remedy is to restore the victims of the constitutional violation to the position they would have occupied in the absence of such conduct. *Milliken v. Bradley, supra.*

Should this Court conclude that the lower Court was correct in its analysis of the constitutionality of the Educational Advancement Act of 1968, the Court below should have addressed itself to the question of the position that the aggrieved plaintiffs would have been in had the General Assembly not excluded the Wilmington School District from the school consolidation and reorganization authorized by the Act.

Under the Educational Advancement Act, only contiguous school districts were to be consolidated. Neither Claymont nor Stanton were at that time contiguous with the Wilmington School Districts nor are they contiguous now. Accordingly, had the Wilmington School District been included rather than excluded for possible reorganization purposes, it is extremely unlikely that it would have been consolidated with either the Claymont School District or what is now the Stanton School District since such a reorganization would have had to include districts in between. Since the general practice of the State Board of Education was to consolidate no more than two adjoining districts in New Castle County, it is unlikely that such a consolidation of districts would have been effected. This is particularly clear when the State wide policy of comparatively small districts is considered, Wilmington being at the time one of the two largest districts in the State. We submit that the remedy should have been limited to a geographical area made up of the school districts which were contiguous to the Wilmington School District at the time of the Educational Advancement Act. The scope of the remedy exceeds the nature of the violation.

In the event that this Court concludes that the Educational Advancement Act or one or more of the other acts of local or state officials referred to in the lower Court's opinions forms a predicate for the granting of interdistrict relief in this case, we submit that substantial questions

exist as to whether the remedy ordered in this case exceeds the equitable powers of the Court below.

First, the question at issue was whether the schools of the City of Wilmington were unconstitutionally segregated not whether the schools in the ten suburban school districts were unconstitutionally segregated. Having determined that the schools of the City of Wilmington were unconstitutionally segregated,[8] the question arose as to how to desegregate them rather than how the suburban schools might be desegregated. We submit that the Court's final judgment below and its opinion of May 19, 1976, has as its purpose and effect the desegregation of all of the schools in the eleven districts rather than just in the City of Wilmington alone. The Court has imposed a racial quota upon each school in the eleven districts. The scope of the remedy far exceeds the nature of the violation. We submit that it would have been more appropriate for the Court to define what would constitute a segregated vis a vis a desegregated school in the City of Wilmington and to then direct the appropriate school authorities to desegregate the schools. As Judge Layton observed in his dissent below, it is not necessary to include all of northern New Castle County for this purpose. It is not necessary to include non-contiguous school districts in order to desegregate Wilmington's schools.

Secondly, we submit that the Court has embarked upon a reorganization which is at variance with the established traditions and patterns and school policies of the State of Delaware. It was established in the record below that Delaware has traditionally followed the policy of small school districts. In order to desegregate the schools

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8. For the record, it should be stated that neither Claymont nor Stanton concede that the Wilmington schools were unconstitutionally segregated. However, it is assumed *arguendo*.

in one of the cities of the State, the Court has seen fit to convert this state wide school policy of long standing to a substantially county-wide type of policy for the majority of students in the State. Based upon the documents in the record below, the total September enrollments for the entire State for 1974 was 130,609 students and 127,476 students for 1975. The super district ordered by the Court below contains within it approximately 80,000 students. This constitutes approximately 63% of the total student population in the State of Delaware. We submit that a substantial question exists as to the excessiveness of this type of remedy.

Thirdly, the Court below has seen fit to involve ten suburban school districts in the remedy by dissolving all of them even though none of the ten districts have been found to have committed any act of an unconstitutional nature or any act which has led to the heavy imbalance of blacks to whites in the Wilmington district. This is particularly harsh with respect to non-contiguous districts such as Claymont and Stanton which have operated unitary systems. Furthermore, the dissolution of the ten suburban districts will disenfranchise the voters of nine of them who have held and exercised the right to elect the members of their district's school boards. In each of the nine elected school districts, five members are elected for staggard five year terms. Thus, in the desegregated area fashioned by the court below, a total of thirty-six[9] school board members, all duly elected and sworn to serve (one-fourth of them for up to four years), will be removed

9. Presumably, school board elections will not be held in the spring of 1977 by reason of the forthcoming dissolution of the districts. Otherwise, there would be forty-five board members whose elected terms would be terminated by court order. Additionally, the terms of the appointed school board members from the Wilmington and Alexis I. duPont districts will be similarly aborted by the lower court's action.

from elective office by judicial fiat. This is an extreme remedy without a legal predicate for it. We submit that this remedy exceeds the limitations of the Court's equitable powers in the case at bar.

The reorganization that has been decreed by the Court is a momentous undertaking, the magnitude of which is yet to be fully realized. It involves the dissolution of lawfully created school districts. It involves, as well, the reassignment of thousands of students, teachers and staff members. It threatens public support of the public school system. It raises the complicated problem of leveling teachers' salaries which vary throughout the eleven districts. It means dealing with separate bargaining agents and reconciling conflicting teacher contracts. It raises serious questions concerning the bonded indebtedness of the eleven districts as well as the taxing powers of the districts involved. The cost to the taxpayers is estimated to be in the multi-million dollar range. We state again that there is no legal predicate for the remedy. Even if such a predicate existed, the remedy is extreme, harsh and excessive and beyond the equitable powers of the Court below.

CONCLUSION.

In a metropolitan school desegregation case, the predicate for interdistrict relief which involves federal judicial interference with local governmental entities such as suburban school districts and, specifically, the dissolution of such districts, is that there be a purposeful constitutional violation by those school districts or the identification of significant segregative effects within those districts resulting from unconstitutional conduct on the part of the city school officials wherein segregated schools are found to exist.

The Court below in the absence of the required predicate has ordered such interdistrict relief contrary to this Court's decisions in *Milliken v. Bradley, Hills v. Gautreaux* and *Washington v. Davis.* Its judgment should be reviewed and reversed. Failure to do so will permit the lower Court's judgment to stand as a precedent contrary to the foregoing decisions of this Court and will serve as a basis for confusion and error on the part of other federal Courts in the vital area of metropolitan desegregation cases.

Respectfully submitted,

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APPENDIX A.

We adopt and incorporate by reference Appendix A to the Jurisdictional Statement filed by the Delaware State Board of Education in support of its appeal from the decision of the District Court below.

APPENDIX B.

We adopt and incorporate by reference Appendix B to the Jurisdictional Statement filed by the Delaware State Board of Education in support of its appeal from the decision of the District Court below.

APPENDIX C.

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BRENDA EVANS, et al.,
Plaintiffs,
v.
MADELINE BUCHANAN, et al.,
Defendants.

CIVIL ACTION NOS.
1816-1822

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

Notice is hereby given that defendants, Claymont School District and Stanton School District, defendants in the above entitled action, hereby appeal to the Supreme Court of the United States from the final order against the defendants entered in this action on June 15, 1976.

This appeal is taken pursuant to 28 *U. S. C.*, § 1253.

/s/ JAMES T. MCKINSTRY,
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August 9, 1976